IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CRP.No. 394 of 2000(F)

R.C.A.NO.4/1996 OF RENT CONTROL APPELLATE AUTHORITY,THODUPUZHA,
R.C.P. NO. 1/1996 OF RENT CONTROLLER, KATTAPPANA.

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REVN. PETITIONER/RESPONDENT IN R.C.A. NO.14/96/PETITIONER IN R.C.P.NO.1/96:

B.G. THOMAS, S/O. P.M. VARKEY,
KOCHUMALIL HOUSE, WALLARDY JUNCTION,
VANDIPERIYAR.P.O., PERIYAR VILLAGE,
PEERIMADE TALUK, IDUKKI DISTRICT.

BY ADV. SRI.K.J.KURIACHAN.

RESPONDENT/APPELLANT IN R.C.A. NO. 4/96 1ST RESPONDENT IN R.C.P.NO.1/96:
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1. A.M. XAVIER, S/O. MANNICK,
ARACKAL HOUSE, WALLARDY JUNCTION,
VANDIPERIYAR.P.O.,
PERIYAR VILLAGE,PEERUMADE TALUK,
IDUKKI DISTRICT. *(DIED)

***ADDL. RESPONDENTS 2 TO 4 IMPLEADED:**

***2. MRS. CICILY XAVIER, W/O. XAVIER,**
ARACKAL HOUSE, WALLARDY JUNCTION,
VANDIPERIYAR.P.O., PEERUMEDU TALUK,
IDUKKI DISTRICT.

C.R.P. NO. 394/2000:

***3. A.X. JOSHY, S/O. XAVIER,**
ARACKAL HOUSE, WALLARDY JUNCTION,
VANDIPERIYAR.P.O., PEERUMEDU TALUK,
IDUKKI DISTRICT.

***4. GLANCY, S/O. XAVIER,**
ARACKAL HOUSE, WALLARDY JUNCTION,
VANDIPERIYAR.P.O., PERUMEDU TALUK,
IDUKKI DISTRICT.

***THE 1ST RESPONDENT DIED, ADDL. RESPONDENTS 2 TO 4 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF THE DECEASED 1ST RESPONDENT AS PER ORDER DATED 25/06/2007 ON I.A.1777/2003.**

BY ADV. SRI.V.GIRI.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/07/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No. 394 of 2000

ORDER

Balachandran, J.

The landlord challenges in this revision the correctness, legality and propriety of the order of the Rent Control Appellate Authority, Alappuzha in R.C.A.No.4/96, reversing the order of eviction passed by the Rent Control Court, Kattappana under Section 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act') in R.C.P.No.1/96. The first counter petitioner in the rent control petition is the respondent. During the pendency of this revision, he passed away and his legal representatives are impleaded as additional respondents 2 to 4.

2. R.C.P.No.1/96 was filed by the petitioner against counter petitioners 1 to 3 seeking for an order of eviction under Sections 11(2)(b), 11(3)

and 11(4)(iii) of the Act. Eviction order was passed under Section 11(4)(iii) of the Act as against the first counter petitioner in the RCP only, as it was found that counter petitioners 2 and 3 had not entered into any lease arrangement with the petitioner and that the first counter petitioner alone is the tenant. Claim for eviction under Sections 11(2)(b) and 11(3) of the Act was, however, rejected. The respondent in this revision, who was the first counter petitioner in the RCP challenged the order of eviction before the Rent Control Appellate Authority filing R.C.A.No.4/96. The appellate authority, however, reversed the order of eviction passed in favour of the petitioner under Section 11(4)(iii) of the Act and dismissed the rent control petition. Hence, this revision at the instance of the petitioner/ landlord.

3. It is contended before us by the learned counsel for the petitioner that there are specific

allegations in the RCP that the counter petitioners are having their own buildings sufficient for their business and dwelling requirements very near to the scheduled building and that was not denied in the objection filed by them and that Exhibit A6 assessment extract for the period from 1993-94 to 1997-98 was produced to show that the first counter petitioner/tenant was having another building of his own.

4. It is contended by the counsel for the respondent that assessment in relation to the building bearing Door No.798 was being made in the name of the first counter petitioner by a mistake and it was, therefore, that it was subsequently corrected by a supplementary assessment, wherein the name of the owner is corrected as Joseph Xavier.

5. RW1, the first counter petitioner/tenant has deposed that his son Joseph Xavier is having business in Steel Furniture and that is being

conducted just opposite to the scheduled building; that none of his children other than Joseph Xavier is conducting any other business and that Joseph Xavier also is having the name Joshi and that Joshi is having two buildings in his own name. To the specific question put to him as to whether the building bearing Door No.798 at Valady Junction, which stood in his name was not being transferred by him to his son Joseph Xavier on 14.2.1995, he has answered in the negative. A6 assessment extract for the period from 1993-94 to 1997-98 shows that the building bearing Door No.798 stood assessed in the name of the first counter petitioner/tenant and by supplementary assessment for the year 1995-96 the assessment was being made in relation to the said building in the name of his son Joseph Xavier @ Joshi. This shows that denial by the first counter petitioner/tenant that he has not transferred the building bearing Door No.798 to his son Joseph Xavier during the assessment year

1995-96 is false, as what has been made is a supplementary assessment during the year 1995-96 in relation to the building, which stood assessed in the name of the first counter petitioner/tenant for the years 1993-94 and 1994-95.

6. The contention of the counsel for the respondent that a mistaken entry as regards ownership was subsequently corrected cannot be accepted, as the supplementary assessment is only with effect from 1995-96 and the assessment in relation to the building bearing Door No.798 stood in the name of the first counter petitioner/tenant himself during the years 1993-94 and 1994-95. It is worthy to note that when RW1 was asked as to whether his son is not having building bearing Door No.798 and 799, he said he is not aware and also pleaded ignorance that any such assessment is there in his son's name. It was for all these reasons that the Rent Control Court found that the first counter petitioner/tenant had come into possession

of the building bearing Door No.798, which would be an alternate accommodation for him to conduct his business and ordered eviction under Section 11(4)(iii) of the Act. The Rent Control Appellate Authority was of the view that the building bearing Door No.798 was incomplete and its construction was completed subsequently and therefore, it was not available for occupation and when it was ready for occupation, it was his son in whose name the building was assessed. We cannot endorse to the view taken by the appellate authority. The tenant, who is constructing a building, on its completion comes into vacant possession of that building and if he transfers either possession or ownership thereof to anybody else thereafter, he cannot be heard to say that he has not come into possession of another building reasonably sufficient for his occupation. The tenant has no case that the said building is not in the same locality or that the said building is not reasonably sufficient for him

to conduct his business, so as to have him evicted invoking Section 11(4)(iii) of the Act.

In the circumstances, allowing this revision, we restore the order of the Rent Controller reversing the judgment of the appellate authority, disallowing eviction under Section 11(4)(iii) of the Act. The original tenant having expired and his legal representatives having been brought on record as additional respondents 2 to 4, we grant them time to surrender vacant possession of the scheduled building to the petitioner/landlord till 5.10.2007 on the following conditions:

i. that they shall deposit the entire arrears of rent, if any, in the execution court with a detailed statement as to its correctness within three weeks from today.

ii. that they shall file affidavits before the execution court within one month from today, reporting that all arrears of rent are cleared and unconditionally undertaking that they will

surrender vacant possession of the scheduled building to the petitioner/landlord positively on or before 5.10.2007 and that they will continue to pay the monthly rents on the due dates itself till they actually surrender vacant possession of the scheduled building to the petitioner/landlord and

iii. that in case the respondents fail to comply with the above conditions, they shall not be entitled to the benefit of continuing in occupation of the scheduled building till 5.10.2007 and shall be liable to be evicted immediately on the expiry of the aforesaid one month in execution of the order of eviction passed against the original tenant by the Rent Control Court and restored by us.

(J.B.Koshy, Judge)

3rd July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

C.R.P.No.394 of 2000

ORDER

3rd July, 2007